IN THE HIGH COURT OF JUDICATURE AT PATNA

Cr.Misc. No.28664 of 2006

1. SMT. KIRTI DEVI
2. AJIT KUMAR

WITH

Cr.Misc. No.52963 of 2007

1. KUMARI KAVITA @ BIBI
2. CHANDRAKANT

Versus

1. STATE OF BIHAR
2. REKHA PRASAD.

FOR THE PETITONER; MR ADITYA NARAYAN SINGH 1
FOR THE STATE;GOPESH KUMAR, A.P.P.
FOR OPPOSITE PARTY NO.2; SANJAY KUMAR SHARMA

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13 22.10.2008 Both the applications have been filed under Section 482 of the Code of Criminal Procedure fort quashing of the order of cognizance dated 1.2.2006 passed by the Chief Judicial Magistrate, Jehanabad in Ghoshi P.S.case No. 235/04 thereby cognizance under Sections 498A, 406, 323, 504 and 379/34 of the Indian Penal Code has been taken against the petitioners and others.

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Heard learned counsel for both parties.

The petitioners are married Nanad , Nandosi, unmarried Nanad and unmarried Debar of the complainant (victim). The police registered the case against the petitioners and others on the basis of complaint lodged by opposite party no.2. After investigation the police submitted charge-sheet upon which the lower court has taken cognizance.

It is submitted by the learned counsel for the petitioners that taking cognizance against the petitioners is out and out abuse of the process of the court. They have no concern with the day to-day affairs of the victim and her husband. Opposite party no.2 has actually

grievance against her husband but has also implicated these petitioners in order to harass them. It is further submitted that the facts disclosed in the complaint petition would go to show that opposite party no.2 has mental problem and in spite of best efforts made by her husband she is not willing to stay in her matrimonial house. This case has been actually filed at the instance of her father in order to extort money.

On the other hand, learned counsel for opposite party no.2 submitted that these petitioners also played role in torturing the opposite party no.2.The police after investigation found the allegation true and hence no interference is warranted at this stage in the order taking cognizance.

Considered the submission of both parties. The main grievance of opposite party no.2 is against her husband but she has also implicated married Nanad, Nandosi and other junior members of the family. Apparently, they have been implicated in order to pressurize her husband and harass them for no fault. It is out and out misuse of the provision of Section 498A of the Indian Penal Code. It has now become common practice in case of Section 498A of the Indian Penal Code to implicate even junior members of the family. Taking cognizance against such members of the family is abuse of the process of the court. The court should be careful at the time of issuing process in such nature of cases against junior or non-family members of the husband.

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In the result, both these applications are allowed and the order taking cognizance dated 1.2.2006 is hereby quashed but in

respect of these petitioners only.

B.Jha **(Ghanshyam Prasad)**

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